

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**

**IN RE:
LIVINGSTON TOWNSHIP FUND ONE, LLC**

**SUBCHAPTER V
CASE NO. 23-02573-JAW**

**BOM’S RESPONSE TO DEBTOR’S MOTION FOR APPROVAL TO SELL
PROPERTY, FREE AND CLEAR OF LIENS, GRANTING A REPLACEMENT LIEN
AND TO PAY REAL ESTATE COMMISSION AND OTHER CLOSING COSTS
[Dkt. # 32]**

BOM a/k/a Bank of Montgomery (“BOM”) for its response to Livingston Township Fund One, LLC’s (“Livingston”) Motion for Approval to Sell Property, Free and Clear of Liens, Granting a Replacement Lien and to Pay Real Estate Commission and Other Closing Costs [Dkt. #32], (“Motion”) states as follows:

1. On November 6, 2023, Livingston commenced this proceeding pursuant to Subchapter V Chapter 11. Craig M. Geno is the Subchapter V Trustee. Livingston owns a single asset, a commercial real estate development, located in Madison County, Mississippi.

BOM’S SECURED CLAIM

2. BOM is a secured creditor in this proceeding. On July 31, 2013, Livingston executed a promissory note to and in favor of BOM in the original principal amount of \$5,000,000, payable in monthly installments of principal and interest with a final maturity date of July 31, 2043, a true and correct copy of the note is attached hereto as Exhibit A and incorporated herein by reference (“Note”);

3. The Note was secured by the following:

a. Deed of Trust executed by Livingston to Steve Van Sickle, Trustee, BOM beneficiary, pursuant to which Livingston granted BOM a first lien on the commercial real estate development in Madison County, Mississippi, which deed

of trust was filed for record on July 31, 2013, as Instrument #710185, in Book 2983 commencing at page 488, of the Record of Mortgages and Deeds of Trust on Land, Madison County, Mississippi, a copy of which deed of trust is attached hereto as Exhibit B and incorporated herein by reference;

b. Assignment of Rents recorded as Instrument #710181 in Book 2983, commencing at Page 464 of the Record of Mortgages and Deeds of Trust on Land, Madison County, Mississippi, a copy of which is attached hereto as Exhibit C and incorporated herein by reference;

c. UCC-1 Financing Statements perfecting BOM's security interest in all chattel paper, accounts, equipment, general intangibles and fixtures, now owned or acquired later, and all proceeds, which UCC-1 Financing Statements are filed with the Mississippi Secretary of State and as a fixture filing with the Chancery Clerk of Madison County, Mississippi, which UCC-1 Financing Statements are attached hereto collectively as Exhibit D.

LIVINGSTON'S DEFAULT ON BOM NOTE

4. Livingston defaulted on the Note by failing to make the monthly payment due on April 1, 2023, and every month thereafter. BOM accelerated the Note and on September 5, 2023, exercised its rights granted under the Deed of Trust and Assignment of Rents to collect the rents from Livingston's tenants, some of whom paid BOM and some of whom did not. Thereafter, BOM commenced a non-judicial foreclosure which was scheduled for November 6, 2023. On the morning of the foreclosure sale, Livingston filed this case as a Subchapter V Chapter 11.

5. As of the petition date, Livingston owed BOM \$5,021,380.78 consisting of principal of \$4,619,202.40, interest of \$326,856.66, late charges of \$2,547.88, miscellaneous fees of \$72,773.84, together with post-petition interest and attorneys' fees.

BOM'S RESPONSE TO MOTION

6. On November 10, 2023, Livingston filed its Motion for a Determination that Livingston Township Fund One, LLC is a Single Asset Real Estate Debtor (Dkt. #37). Without waiving its objection to Livingston's eligibility to be a Subchapter V debtor, BOM responds to the Motion on the grounds set forth below.

7. Subject to the objection below, BOM supports the sale and has no objection to the sale as outlined in the Motion provided that, pursuant to 11 U.S.C. § 363(e), the Court condition the sale upon providing adequate protection to BOM in the form of payment of the net closing costs to BOM at the closing of the sale and provided the Loan Agreement, as described in the Motion and the obligations thereunder, are payable to BOM, not the Debtor.

8. According to the Motion, B&S Holdings LLC, ("B&S") a company in which Michael Bollenbacher, the managing member of Livingston, is the managing member, owns approximately 8.33 acres of property that includes the small portion of the building being sold. A copy of the ownership map for B&S's property is attached hereto as Exhibit E.¹ Upon information and belief, the Motion seeks authority to pay the ad valorem taxes on the entire 8.33 acre tract

¹ BOM reserves all rights against all parties with respect to how this small tract of property, originally owned by Chestnut Developers, LLC, a Mississippi limited liability company (of which, according to the Mississippi Secretary of State, David Landrum, one of the guarantors of Livingston's debt to BOM was a member in 2013, and of which, according to the Mississippi Secretary of State, Michael Bollenbacher has been the Managing Member since at least April of 2018) was omitted from Chestnut Developers, LLC's conveyance of the larger tract of property to Livingston in 2013. BOM also reserves all rights against all parties who knew or should have known about this issue when Chestnut Developers, LLC conveyed this property in 2019 to Marna Sharpe, who upon information and belief is the spouse of Michael Sharpe, a guarantor of the BOM loan, who then conveyed it to B&S also in 2019.

owned by B&S. BOM objects to the payment of ad valorem taxes for the entire tract owned by B&S. Only those ad valorem taxes attributable to the portion of property being sold should be paid from the estate.

WHEREFORE, BOM respectfully requests that the Court approve the sale on the terms set forth in the Motion subject only to the Loan Agreement being made payable to BOM and subject to the reduction in ad valorem taxes for the sale attributable to the property owned by B&S being reduced to only the amount related to the property being sold.

Respectfully submitted, this 20th day of November, 2023.

BOM A/K/A BANK OF MONTGOMERY

By: /s/ Jim F. Spencer, Jr.

Jim F. Spencer, Jr.

Its attorneys

OF COUNSEL

JIM F. SPENCER, JR. (MSB#7736)

ERIN A. MCMANUS (MSB #106317)

WATKINS & EAGER PLLC

P.O. BOX 650

JACKSON, MISSISSIPPI 39205

(601) 965-1900

jspencer@watkinseager.com

CERTIFICATE OF SERVICE

I, Jim F. Spencer, Jr., do hereby certify that I have caused to be served the above and for going pleading on all parties requesting notice by using the ECF filing system of the court:

Thomas Carl Rollins, Jr. – trollins@therollinsfirm.com

Eileen N. Shaffer – eshaffer@eshaffer-law.com

Steven H. Smith Smith-ssmith@shsattorneys.com

United States Trustee - USTPRegion05.JA.ECF@usdoj.gov

This 20th day of November, 2023.

/s/ Jim F. Spencer, Jr._____

Jim F. Spencer, Jr.